



# Memorandum

TO: RULES COMMITTEE

FROM: Councilmember Sam Liccardo  
Councilmember Xavier Campos  
Councilmember Donald Rocha

SUBJECT: ADOPTION OF RESOLUTION  
IN SUPPORT OF AN  
AMENDMENT TO THE UNITED  
STATES CONSTITUTION

DATE: January 17, 2013

APPROVED

RECOMMENDATION

Refer to the Elections Commission, and with the Commission's support, to the full council, the question of whether or not the City of San José should adopt a resolution calling for an amendment to the United States Constitution that states that, first, only individual human beings, not corporations nor other collective entities, enjoy the First Amendment protections the United States Constitution, and second, that money is not "speech" protected by the First Amendment.

## BACKGROUND

The United States Supreme Court's decision in Citizen's United v. Federal Elections Commission ushered in a new era of politics. Corporate entities and special interests can spend unlimited amounts of money expressly advocating the election or defeat of a candidate or ballot measure, unfettered by longstanding and reasonable regulations to constrain the influence of money on voting outcomes. The practical effect of this decision on governance in San José, and on cities throughout the nation, appears self-evident. We have all witnessed how financial influences can distort the public policymaking process, and how it can disenfranchise the political will of the vast majority of American citizens. Without some reasonable regulation, money will exert plenary power over politics, and over policy outcomes.

We do not seek to scapegoat corporations, nor to preclude corporations from making campaign contributions, nor to prevent them from participating meaningfully in the political process. Rather, this resolution seeks to add San José to the growing list of communities and organizations--such as the U.S. Conference of Mayors, the legislatures of 11 states, and dozens of cities, including Los Angeles, San Diego, San Francisco, and Oakland--demanding to level the playing field that "big money" has so plainly distorted.

As recently as 1990, the U.S. Supreme Court upheld the right of public bodies to restrict corporate contributions in elections, observing that "corporate wealth can unfairly influence elections," and decrying

“the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporations’ political ideas.” Tellingly, even that Court’s conservative Chief Justice, William Rehnquist, joined in the majority opinion.

In light of the Supreme Court’s 2010 overturning of the Austin decision, the Constitution’s amendment process provides only remedy available to the public. Accordingly, San José should join the voices from across the nation in calling to reclaim a government for the people.

## **Resolution of the City Council of San Jose Calling for an Amendment to the U.S. Constitution**

WHEREAS democracy means governance by the people, and so the citizens of the City of San Jose intend by this resolution to protect democracy in our community and our nation; and

WHEREAS corporations are not mentioned in the Constitution, and the people have never granted constitutional rights to corporations; and

WHEREAS corporations and other artificial entities are not human beings and are not naturally endowed with conscience or the rights of human beings, but are creations of law and must be permitted to do only what is authorized under law; and

WHEREAS corporations have claimed to be persons, possessing the rights of personhood, including free speech and other constitutional freedoms guaranteed by the Bill of Rights and the 14th Amendment to the Constitution of the United States; and

WHEREAS the United States Supreme Court recognized in *Austin v. Michigan Chamber of Commerce* (1990) the threat to a republican form of government posed by "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporations' political ideas" and therefore upheld limits on independent expenditures by corporations to influence elections; and

WHEREAS the United States Supreme Court in *Citizens United v. Federal Election Commission* (2010) reversed the decision in *Austin*, allowing unlimited corporate spending to influence elections and policy decisions; and

WHEREAS corporations have unduly influenced our democratic processes by pressuring our legislators and dominating election campaigns with virtually unlimited contributions; and

WHEREAS freedom to speak must not be equated with freedom to spend money, for then millions of people who have little money would be thereby disenfranchised because their free speech is overwhelmed by the message of Corporations spending millions of dollars;

NOW, THEREFORE, BE IT RESOLVED that the City Council of San Jose calls for an amendment to the Constitution of the United States to establish that

1. Only human beings, not corporations nor other artificial entities, are endowed with rights protected by the constitution, and

2. Money is not speech, and therefore the expenditure of money to influence elections is not a form of constitutionally protected speech and may be regulated.

BE IT FURTHER RESOLVED that the City Council of San Jose hereby calls on our federal and state elected representatives to approve this amendment in order to restore political power to the people of the United States.

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